

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND)
COMPOUNDING PHARMACY, INC.) MDL No. 2419
PRODUCTS LIABILITY LITIGATION) Dkt. No. 1:13-md-2419-FDS

This Document Relates to:)

Barger, et al. v. Ameridose, LLC et al.) Dkt. No. 1:13-cv-12619-FDS

**MOTION FOR SUMMARY JUDGMENT ON BEHALF OF SAINT THOMAS
OUTPATIENT NEUROSURGICAL CENTER, LLC, HOWELL ALLEN CLINIC, A
Professional Corporation, JOHN CULCLASURE, M.D., and DEBRA
SCHAMBERG, R.N.**

Come the Defendants, Saint Thomas Outpatient Neurosurgical Center, LLC (“STOPNC”), Howell Allen Clinic, a Professional Corporation (“Howell Allen”), John Culclasure, M.D., and Debra Schamberg, R.N. (collectively “Defendants”), and respectfully move for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

First, all of Plaintiffs’ claims are governed exclusively by the Health Care Liability Act, Tenn. Code Ann. § 29-26-101 *et seq.*, as this is a “health care liability action” as defined by the statute.

Thus, all claims pursuant other common law or statutory causes of action must be dismissed, as the exclusive remedy available to the instant Plaintiffs is pursuant the Act.

Regardless, the Plaintiffs have failed to comply with the pre-suit notice requirements of the Health Care Liability Act, set out at Tenn. Code Ann. § 29-26-121. And, the Plaintiffs have failed to attach a certificate of good faith to their Complaint, required by Tenn. Code Ann. § 29-26-122.

The Plaintiffs' failure to comply with Tenn. Code Ann. § 29-26-122 mandates dismissal of Plaintiffs' claims with prejudice. In addition, and in the alternative, Plaintiffs' failure to comply with Tenn. Code Ann. § 29-26-121 mandates dismissal of Plaintiffs' claims.

In support of this motion, Defendants rely upon and simultaneously file and serve:

- Supporting Memorandum of Law.
- Fed. R. Civ. P. 56(c)(1) Statement of Undisputed Material Facts.
- Affidavit of John Culclasure, M.D.

Defendants reserve their right to further move to dismiss the Complaint on any other legal ground set forth in Federal Rule of Civil Procedure 12 or any other applicable law, statute, or rule, and expressly do not waive any defense entitled to them by law.

Counsel for Defendants certify that they have contacted Plaintiffs' counsel and conferred in a good-faith attempt to resolve the motion and/or narrow the issues as required by Local Rule 7.1(a)(2).

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris Tardio

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 9th day of December, 2013.

/s/ Chris Tardio

Chris Tardio